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8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION**

10 In re Richard Irving Levinson and Lisa
11 Marie Levinson,

12 Debtors

13 Dennis Gewant DBA Atlas
14 Judgment Recovery,
15 Plaintiff,

16 v.

17 Richard Irving Levinson and
18 Lisa Marie Levinson,
19 Defendants

Case No.: 2:22-BK-15330-WB
Chapter 7 Proceeding
Adv. Proc. No. 2:22-AP-01218-WB
DC NO.: DG-5

**DENNIS GEWANT'S REPLY IN SUPPORT OF
HIS MOTION FOR SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Noticed Hearing Date:
Time: June 6, 2023, 2:00 PM
Courtroom: 1375
Judge: Hon. Julia W. Brand

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1 **A. SUMMARY**

2 The Levinsons have doubled down on their attempt to have a *non-speedy, unjust, and*
3 *expensive* resolution to this legal dispute in violation of FRCP 1 and FRBP 1001. Their
4 Opposition to Gewant's Motion fails to successfully rebut a single point in the Motion.
5 Moreover, the Opposition is laden with more of the same whole-cloth fabrications of legal
6 requirements and improper, non-genuine "disputes" of facts and conclusions that are clearly
7 established by the state court record as did the Levinsons' Motion for Summary Judgment
8 ("DMSJ", DE #12). That record meets all the requirements to preclude any non-summary
9 relitigation of the sole relevant issue: fraud under California law and Ninth Circuit bankruptcy
10 law. A *retrial* would work manifest injustice on Gewant and Herzog, and be a sheer waste of the
11 Court's time.

14 **B. REPLIES TO STATEMENTS IN THE OPPOSITION**

16 **Opposition:** Rather than recite the underlying facts that led to the underlying state
17 court judgment, Gewant merely recited the timeline of the timing underlying the
18 judgment and seeks issue preclusion from this Court with respect to the entire state court
19 judgment." 2:14-18. "...Gewant has not alleged any specific facts concerning the
20 underlying conduct...". 3:5-6. "[T]he nondischargeability complaint does not recite the
21 debtor's wrongful conduct, but merely relies on the pre-existing state court judgment..."
22 5:16-18. "[T]he state court complaint itself sheds little light, as it just makes conclusory
23 allegations concerning the underlying transaction..."

24 **Reply:** Defendants made the same false statement in their DMSJ. Gewant not only
25 disproved the statement in his Response, but also showed the Defendants' knowledge of the
26 falsity of their statement: "The Answer (DE #4, 3:12) denied the five paragraphs [pp. 6-7, paras.
27 20-24] of the Complaint in which those allegations were explicitly made...". DE #18, 24:7-26.

1 Those paragraphs in turn summarized roughly 3-½ pages of detailed allegations in the original
2 state court Complaint. Ex. 5 to DE #1, pp. 3-6. Those allegations were clearly factual, not
3 mainly conclusory. Surely, with the Levinsons paying for more than a year’s worth of legal
4 defense leading up to and through trial, they would have brought and prevailed on a motion to
5 dismiss, had those allegations not been sufficiently non-conclusory to support moving forward
6 past the motion to dismiss stage. Moreover, Judge Feffer could have found cause to dismiss on
7 his own motion. Since he did not, he “necessarily found” that the Complaint was legally
8 sufficient. That finding, like all his other findings, cannot be attacked at this stage.
9

10
11 **Opposition:** “What was the record on which the underlying judgment was based? There
12 apparently were no findings of fact requested or adopted by the trial court. There is no
13 court transcript of the testimony adduced or the exhibits referred to. How is this Court to
14 determine whether the elements of each cause of action were supported by sufficient
evidence?” 4:17-22.

15 **Reply:** Here again, Defendants try to erect a hoop that Gewant must jump through (“the
16 testimony adduced [and] the exhibits referred to”), but they do not cite legal authority for the
17 existence of any such hoop.
18

19 The legal conclusions reached by the state court were clear from the judgment. All the
20 elements necessary to support a conclusion of fraud were “necessarily decided” to exist by the
21 state court, because to assume otherwise is to presume that that court committed reversible
22 error. Such a conclusion here would be a collateral attack on a final judgment that was fully
23 litigated, and is simply not permitted. The facts were simple enough. Representations were
24 made, which Texlink had reason to trust. An order was paid for, product was never delivered,
25
26

1 no part of the payment was ever refunded, and no explanation or excuse for this ripoff was
2 provided in the Defendants' state court Answer.

3
4 At trial the Defendants appeared but did not testify, helping eliminate any doubts that
5 Judge Feffer might have had as to the Levinsons' culpability "on all counts plead" including
6 both the fraud and the BPC 17500 violation for which punitive damages were awarded. State
7 court judgment, Ex. 3 to the DMSJ. Contrary to the opposition statement above, the exhibits
8 considered by Judge Feffer were specifically listed in the trial minute order. Ex. 2 to the DMSJ.

9
10 Gewant's predecessors-in-interest Texlink and Herzog jumped through all the required
11 hoops, and the record before this Court makes that perfectly clear.

12
13 **Opposition:** "What evidence was adduced that the defendants intended to induce
14 reliance?". 6:2-3. "Without being able to cite to the specific evidence which would
15 invoke this particular statute such that it is applies in the nondischargeability context, the
16 Court must conclude that it can not exercise issue preclusion with respect to the Court's
17 judgment on the Section 17200 and [17500] claims." 9:1-5.

18 **Reply:** The implication of the rhetorical question is simply absurd. No business will stay
19 in business for long if it gives away \$30,000 without receiving a promise of reasonably
20 equivalent value in return.

21
22 Again, Defendants have pointed to no citation of any legal requirement that the evidence
23 adduced in support of each claim must be evident from the record. The Defendants themselves
24 quote from the state court Complaint to the effect that "[p]rior to December of 1998 plaintiff's
25 assignor and defendant conducted several business transactions involving minimal amounts of

1 money all designed by defendants to gain the trust of plaintiff's assignor." Is this Court
2 supposed to presume that no credible testimony about that was given by Mr. Herzog? How long
3 would it have taken to describe the basic facts of such transactions, then point to the larger
4 \$30,000 check and assert under oath that the promised merchandise was never delivered in
5 exchange for that \$30,000? The entire morning of trial was taken up by the Plaintiff's case, and
6 then the Defendants chose not to testify. There was plenty of time for Mr. Herzog to testify as to
7 all the relevant facts necessary to support the elements of "all counts plead." "Adverse
8 inferences may be drawn from the silence of someone who may be reasonably expected to
9 speak up in his own defense."

12 As for whether the there was any public impact, again, since the trial court necessarily
13 decided that the elements of BPC 17500 were met by awarding judgment on all causes pled,
14 that finding is not to be disturbed regardless of whether it was sufficient. See the next Reply
15 immediately below.

18 **Opposition:** "THE ATTORNEY FEES AWARDED ARE NOT RELATED TO ANY
19 FRAUD JUDGMENT". 10:5-6.

20 **Reply:** As Gewant stated before, the judgment is silent on the issue of attorney fees. Ex.
21 3 to the Defendants' own DMSJ, 2:17.

23 Also as pointed out before, *In re Zuckerman*, (B.A.P. 9th Cir. 2020) 613 B.R. 707, 718,
24 held that a bankruptcy court "need not address the sufficiency of the state court's findings

1 because it necessarily decided the issues," and this applies to any award stated in the judgment.

2 DE #18, 12:22-13:10.

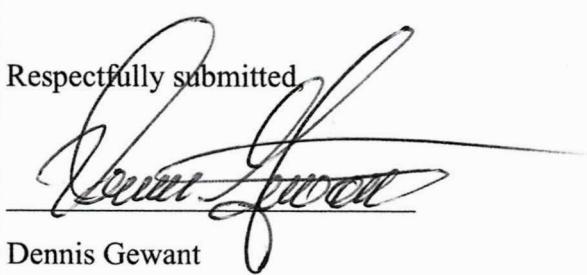
4 **C. CONCLUSION**

5 The "controlling facts" are clearly evident from the record, including the state court
6 Complaint and trial Minutes, as are "the evidence adduced" and the "legal conclusions ...
7 reached at trial". The record meets all the tests required under caselaw. It would be manifestly
8 unjust not to let the state court judgment stand, along with all accrued interest remaining unpaid.
9 Bankruptcy relief is not intended for, or available to, dishonest debtors. This Court is bound by
10 the evidence and the law to find summarily that the non-dischargeability of the Levinsons' debt
11 to Gewant has already been proven by the preponderance of the evidence.

12
13
14 The waste of judicial and judgment enforcement resources caused by the conduct of
15 Defendants and their agents should be billed to them. And that should happen without Gewant
16 having to take the lead and spend even *more* resources than he already has been forced to do
17 simply to maintain his position, as the assignee of a judgment for fraud.

18
19 Dated this 20 day of May, 2023.

20
21 Respectfully submitted

22
23 
24 Dennis Gewant

25 Plaintiff/Judgment Creditor/Assignee of Record

26
27
28 PLAINTIFF DENNIS GEWANT'S REPLY IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
269 S Beverly Dr, Ste 102, Beverly Hills, CA 90212

A true and correct copy of the foregoing document entitled (specify): DENNIS GEWANT'S REPLY IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) _____, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

As a pro se litigant, I have no access to CM/ECF.

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) 05/20/2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Hon. Julia W. Brand, United States Bankruptcy Court, 255 E. Temple St., Courtroom 1375, Los Angeles CA 90012.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) 05/20/2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Defendants' counsel via email per written agreement:

David S Hagen, DavidHagenLaw@gmail.com

To Defendants through Richard Levinson: richlevinson@prodigy.net

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

05/20/2023 Dennis Gewant
Date Printed Name

Signature

5/20/2023 SHARON INCUL as to Judge's copy

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.